

Supreme Court, U.S.
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No. 90-1029

In The
Supreme Court of the United States
October Term, 1991

—♦—
EASTMAN KODAK COMPANY,

Petitioner,
v.

IMAGE TECHNICAL SERVICES, INC., et al.,
Respondents.

—♦—
**On Writ Of Certiorari To The United States
Court Of Appeals For The Ninth Circuit**

—♦—
**BRIEF AMICUS CURIAE OF NATIONAL
ELECTRONICS SALES AND SERVICE DEALERS
ASSOCIATION IN SUPPORT OF RESPONDENTS**

—♦—
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BRIEF AMICUS CURIAE OF NATIONAL
ELECTRONICS SALES AND SERVICE DEALERS
ASSOCIATION IN SUPPORT OF RESPONDENTS

I. INTEREST OF AMICUS CURIAE¹

The National Electronics Sales and Service Dealers Association ("NESDA") is a trade association for the professionals in the business of servicing all types of electronics products, including consumer products, appliances, satellite receiving equipment, computers, and

¹ Counsel of record have consented to the filing of this *amicus* brief and those letters have been filed with the clerk pursuant to Supreme Court Rule 37.

medical and industrial electronic equipment. The consumer products its members service include radios, televisions, and video equipment. The National Alliance of T.V. & Electronics Association, from which NESDA grew, was founded in 1950.

Its membership, 875 in total, is comprised of owners and managers of independent electronic service businesses and sales operations. The members range from one-man shops to large, multi-location businesses.

NESDA's purpose is to improve its members' businesses through information sharing and cooperation. NESDA helps members cope with escalating demands of business management and keep pace with changes in technology. It also helps members to recognize and meet the changing needs of the consumer.

NESDA has associate organizations in fourteen states: Arizona, California, Connecticut, Florida, Kansas, Massachusetts, Missouri, New York, Ohio, Oregon, Tennessee, Texas, Virginia and Wisconsin. These organizations include thousands of other state and local association members. Each local or regional chapter works independently to serve the local association member within its own area. The affiliated organizations combine with NESDA to provide member benefits on a national scale and to assess industry and association problems.

The International Society of Certified Electronics Technicians ("ISCET") is also part of NESDA. ISCET was founded in 1970. ISCET members are employed technicians, smaller business owners or managers, and electronics instructors. They service a full spectrum of

products, from engineering to military, but their primary focus is on electronics.

ISCET members service radios, phonographs, tape recorders, compact disc players, audio high-fidelity equipment, televisions, audio-visual units, antennae, 2-way communications radios, public address and background sound systems, computers, and peripheral equipment, among other electronic products. There are 1,750 members of ISCET, which brings the combined membership of the two organizations to approximately 2,600. ISCET's purpose is to further professionalism in servicing and to improve the status of electronics technicians.

Becoming a professional electronics technician requires a substantial investment by the technician or his employer in tools, service literature, test equipment and service aids. Up to two years of technical training in electronics plus two to four years of on the job experience are required to become a fully qualified service technician. This rigorous training, however, is not by itself enough to qualify a service technician for membership in ISCET. Only electronics technicians who have passed a special exam are eligible to apply for membership.

Both NESDA and ISCET would be severely impacted by a decision in this case favoring Kodak. If Kodak is permitted to prevent independent service organizations ("ISOs") access to Kodak parts, the likelihood is very great that other manufacturers will follow suit. Access to parts is critical to an organization that services a particular manufacturer's product. Without parts it is impossible to repair electronics products.

Kodak's chief argument in this case is that because Kodak has no monopoly over the sale of a type of product, i.e., copiers and micrographics equipment, then it follows that Kodak cannot have market power with respect to service, even if no other company can compete for repairs on Kodak's brand of equipment. According to Kodak, other companies are not competent to service Kodak's high-tech equipment, so the service of Kodak's equipment must be limited to Kodak.

This argument is factually incorrect. NESDA has been in existence effectively since 1950, and ISCET since 1970. It defies logic that the thousands of businesses which are members of these organizations are not competent to service high-tech equipment. Their very existence for such a long period of time refutes this argument. It would not be possible for these businesses to survive in a competitive marketplace unless their services were comparable to, if not better than, the manufacturer's.

The members of these long-standing organizations will be forced out of business if Kodak and other manufacturers are permitted to monopolize the parts necessary to service their equipment. In most cases there is no alternative means to obtain the parts; the manufacturer is the sole source. Without parts and service literature, members of NESDA and ISCET will be driven out of business in a matter of months.

If this Court rules that Kodak may vertically integrate and refuse to sell parts to ISOs, then many other manufacturers, even those which now favor using ISOs, will be unable to resist the lure of a service monopoly. By

maintaining a strangle hold on parts and service manuals, a manufacturer will be able to charge higher prices to consumers who will have no alternative to manufacturer-supplied service.

II. SUMMARY OF ARGUMENT, ARGUMENT, CONCLUSION

NESDA and ISCET join in the Summary of Argument, Argument and Conclusion of the brief filed by Computer Service Network International as *amicus curiae* in this case.

Respectfully submitted,

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